

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT



Application No. 13862, of James W. Stewart, pursuant to Paragraph 8207.11 of the Zoning Regulations, for a variance from the off-street parking requirements (Sub-section 7202.1) to use the first, second and third floors of the subject premises as a three unit apartment house in a C-2-A District at the premises 225 Florida Avenue, N.W., (Square 3098, Lot 55).

HEARING DATES: November 10, 1982 and January 12, 1983
DECISION DATE: February 2, 1983

FINDINGS OF FACT:

1. At the public hearing on November 10, 1982, a representative of the Bloomingdale Civic Association requested that hearing be rescheduled because notification of the public hearing on the subject application was sent to ANC-5C, and not to ANC-1B. The Board of Zoning Adjustment staff ascertained that the official city-wide map incorrectly showed Rhode Island Avenue, Second Street and Florida Avenue intersecting at a single point. On that map, the subject property was placed within the boundaries of ANC-5C. The individual ANC map indicated that the subject property was within the ANC-1B boundaries. In June, 1982, when the applicant appeared before the Board requesting a variance to use the subject property as a rooming house, both ANC 1B and ANC 5C had been duly notified. The Chairman decided to reschedule the public hearing on the subject application to January 12, 1983, by which time ANC-1B would have been properly notified.

2. The subject site is located within a triangular shaped square, bounded on the north side by S Street, on the east by Second Street, and on the west by Third Street. The site is located mid-block on the north side of Florida Avenue at the premises known as 225 Florida Avenue, N.W. It is in a C-2-A District.

3. The subject site is improved with a three story plus basement brick rowhouse. The structure was built in 1905 and predates the current Zoning Regulations. The structure contained two apartment units in use when the applicant purchased the property. There is no valid certificate of occupancy on record for the flat. Currently the applicant rents the building to six students. The student living on the third floor shares the kitchen and bathroom on the second floor.

4. Within the immediate area of the site, Florida Avenue is zoned C-2-A. Two blocks northwest of the site is a small area also zoned C-2-A. The predominant zoning of the surrounding area is R-4. The 200 block of Florida Avenue, N.W. is characterized by three and one half story, attached structures built at the turn of the century and intended for residential use. Several of the structures on the block have been altered to accommodate first floor commercial uses. The surrounding area is characterized by residential use in a variety of forms, including flats, row dwellings which have been converted to apartments, and row dwellings. The area is a well maintained, stable residential neighborhood.

5. The applicant is requesting a variance from the off-street parking requirements in order to convert the existing building into a three unit apartment house. Each floor, excluding the English basement which is used for storage, will contain one unit. The applicant intends to remodel an existing outdated kitchen and bathroom on the second floor and convert the third floor into a "modern, deluxe" efficiency unit. No renovation or remodeling is necessary in order to use the first floor as a separate, distinct unit. All construction associated with the conversion will be limited to interior renovations and no addition to or enlargement of the existing structure is proposed.

6. The proposed use is permitted in a C-2-A District as a matter-of-right. Conversion to a three unit apartment house is first permitted in an R-4 District.

7. According to Sub-section 7202.1 of the Zoning Regulations, one on-site parking space is required for the proposed use. The applicant cannot provide the one space and seeks a variance from the parking requirements.

8. The structural and lot limitations of the subject property do not permit a conversion of the yard area into a one-car parking space. According to Sub-section 7204.1, the required parking space on-site must be at least nine feet wide and nineteen feet long. The front yard is six feet by ten feet and above grade. The rear yard is thirteen feet at its deepest measurement. A porch is located directly below a kitchen area at the rear. The porch columns provide structural support for that kitchen area. The porch steps extend two and one-half feet into the yard.

9. On-street parking is prohibited on Florida Avenue in the vicinity of the subject site. A two-hour residential parking permit system is in effect on Second and Third Streets, as well as on R and S Streets. On-street parking is also allowed on the other minor arterials in the surrounding area. Residential permit restrictions apply to on-street parking in the area of the subject site.

10. The office of Planning and Development, by memorandum dated November 1, 1982, recommended approval of the subject application. The OPD reported that the subject structure predates the application of the current parking requirements, that the proposed conversion to an apartment house is consistent with the C-2-A District preference for residential uses and that the granting of this variance would not undermine the intent or integrity of the zone plan for the city. Further, the OPD was of the opinion that the impacts associated with the requested relief appeared to be minimal, as the applicant's tenants could utilize on-street parking within a reasonable distance of the subject structure. The Board, for reasons discussed below, does not concur with the OPD recommendation.

11. Advisory Neighborhood Commission 1B petitioned the Board to waive the requirements of the Supplemental Rules of Practice and Procedure before the BZA that the ANC report be filed at least seven days before the Public Hearing. Due to the delayed notification of ANC 1B, the Commission's representative reported that it was unable to vote on a completed report prior to the Public Hearing. The Chair decided to waive the requirement and leave the record open for the ANC 1B to file its report.

12. The ANC 1B, by report dated January 17, 1983, opposed the subject application on the grounds that:

- A. There is nothing unique about the subject property. The age of the building and the fact that it predates the current parking regulations are not "unique" characteristics, but general conditions which typify the surrounding property on this commercial sector of Florida Avenue, N.W. The subject property is part of a series of identical rowhouses in the 200 block of Florida Avenue, N.W. The age of the building is not a unique feature within the meaning of Paragraph 8207.11, but merely a general characteristic of the rowhouses in the 200 block of Florida Avenue, N.W.
- B. The applicant would suffer no practical difficulties using the property for a permitted use. Other property owners in the same row of houses on Florida Avenue use their turn-of-the-century buildings in conformity with the Regulations. There is nothing so unusual about this property which would prevent the applicant from using his property likewise. Moreover, the fact that it would be more profitable for the applicant to use the subject property as a three-unit apartment as opposed to a single family home, flat or permitted commercial use does not justify a variance.

- C. The use of the subject building as an apartment would adversely affect the neighborhood by increasing parking congestion on adjacent residential streets. On-street parking is prohibited on Florida Avenue, N.W. and the applicant's tenants would be required to park on adjacent streets. The adjacent streets referred to, Second, Third, S and R Streets, N.W., are residential streets which currently suffer parking problems. These problems are made worse by traffic generated by nearby Howard University and a church at Second and S Streets. The proposed use would exacerbate the problem by increasing parking demand on the adjacent residential streets.
- D. The granting of this variance would violate the intent and purpose of the zoning regulations. The subject property is no different than other rowhouses in the 200 block of Florida Avenue, N.W. If the BZA establishes a precedent here by permitting an apartment conversion without the required off-street parking, it would be required to permit the other rowhouses in the 200 block of Florida Avenue, N.W. to be similarly converted without the provision of off-street parking. This would exacerbate the parking problem on adjacent residential streets. The off-street parking requirements were intended to lessen the on-street parking problems.
- E. The application here does not satisfy the residential recreation space requirement of Section 5302. This section requires that residential recreation space be provided for apartment uses in commercial districts. In C-2-A Districts, apartment buildings must provide an area of at least twenty percent of the gross floor area as recreational space for the tenants.
- F. The proposed apartment use may violate the floor area ratio limitations of Section 5301. It is unclear whether this section applies to the apartment use proposed here. The Board should determine whether Section 5301 applies and, if so, whether the proposed use exceeds the maximum permitted F.A.R. of 2.5.

13. The Bloomingdale Civic Association, in testimony at the Public Hearing and by letter dated November 9, 1982, was in opposition to the subject application. The Association argued that the litter and traffic congestion problems would increase if the variance was granted. The Association further contended that the high density neighborhood does not have facilities to accommodate additional

on-street parking. The Association argued that the existing crime and vice problems in the neighborhood were liable to increase with the introduction of non owner-occupied housing.

14. Several area residents contended at the public hearing that because there is no traffic light or crossing guard at the intersection near the site, there is a potential hazard for the handicapped, the elderly and school children. Traffic movement is almost continuous. Near the subject property, buses turn onto Florida Avenue. The uses in the vicinity which contribute to excess traffic include a funeral home at Fourth Street and Rhode Island Avenue, a church at Second Street and Rhode Island Avenue, an Elk Society Home on Third Street which is two blocks from the subject premises, and a delicatessen which is frequented by truck drivers whose daily routes include Florida Avenue.

15. There were petitions with some 125 signatures submitted to the record in opposition to the application. The opposition was on the grounds that parking was at a premium in the neighborhood, that owners were forced to park blocks from their homes and that the proposed apartment house use would intensify the already critical parking situation.

16. The Board is required by statute to give great weight to the issues and concerns of the ANC. In addressing those matters, in addition to those of other opposition, the Board finds that "uniqueness" is not a test for an area variance. The language of the Zoning Act and the Zoning Regulations requires that there be an "extraordinary or exceptional situation or condition of a specific piece of property..." Accordingly the ANC did not address the proper standard. As to (B), the proposed use is a permitted use in a C-2-A District. The issue of the proposed use being more profitable is not before the Board. There is no evidence of record to that effect. As to (D), there is no issue of precedent setting. The Board will determine each application on its own merits. As to (E) and (F), these issues are not properly before Board. If the opposition disagreed, the remedy was to appeal the determination of the Zoning Administrator and not challenge it before the Board. The Board finds that the merits of the ANC recommendation goes to (C), parking, and its adverse affect on the immediate area. The Board finds that the evidence of parking impact produced by the ANC and the neighborhood opposition to be more persuasive than that of the OPD and the assertions of the applicant. The neighborhood evidence is based on daily experience and not on two on-site inspections. The remaining issues of unusual crime and litter are problematical. Also, they are not zoning issues. The proper forum for such issues are enforcement agencies of the Government of the District of Columbia.


CONCLUSIONS OF LAW AND OPINION:

Based on the findings of fact and the evidence of record, the Board concludes that the applicant is seeking an area variance, the granting of which requires the showing of a practical difficulty which is inherent in the property itself. Also, the applicant, pursuant to Paragraph 8207.11, must establish that the relief can be granted without substantial detriment to the public good and without substantially impairing the intent and purpose of the Zoning Regulations. The Board concludes that based on Findings No. 8 and No. 10 that the practical difficulty does exist. However the Board further concludes that based on Findings No. 12(c), 13, 14 and 15, the relief cannot be granted in compliance with Paragraph 8207.11 of the Zoning Regulations. Accordingly, it is ORDERED that the application is DENIED.

VOTE: 4-0 (John G. Parsons, William F. McIntosh, Douglas J. Patton, Charles R. Norris to deny; Carrie L. Thornhill, not present, not voting).

BY ORDER OF THE D.C. BOARD OF ZONING ADJUSTMENT

ATTESTED BY:


STEVEN E. SHER
Executive Director

FINAL DATE OF ORDER: JUL 25 1983

UNDER SUB-SECTION 8204.3 OF THE ZONING REGULATIONS, "NO DECISION OR ORDER OF THE BOARD SHALL TAKE EFFECT UNTIL TEN DAYS AFTER HAVING BECOME FINAL PURSUANT TO THE SUPPLEMENTAL RULES OF PRACTICE AND PROCEDURE BEFORE THE BOARD OF ZONING ADJUSTMENT."

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